IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8469 OF 2004

Dadasaheb Sadashiv Mane & Ors. ..Petitioners.

Versus

Smt. Radhabai Jaysing Mane ..Respondent.

Shri Milind Deshmukh for the Petitioners.

CORAM : S. A. BOBDE, J.

DATED : 07TH JULY, 2005.

P.C.:

1. The Petitioners have challenged the order, permitting amendment of the plaint. The Plaintiff -Respondent is a lady, who appears to have left the home of her in- laws because of harassment. She has left Nagewadi where the defendants, i.e. her in-laws, are residing and has gone to village Hiware, Tal. Khanapur, Dist. Sangli.

2. According to the Respondent, her nephews - the defendant Nos. 1 and 2 and their mother -defendant

No.3 got a sale deed executed on 06.04.1991 by impersonating the plaintiff. She got knowledge of the said sale deed in May 1999 and filed a suit on 26.07.1999. The suit was originally filed for declaration that she is owner of the suit fields and perpetual prohibitory injunction, restraining the defendants 1 to 3, the respondents herein, causing obstruction to the possession over the suit fields. Thereafter, the plaintiff sought amendment, whereby she sought possession in case the court comes to the conclusion that she is not in possession of the suit fields.

3. This amendment has been allowed.

4. The learned counsel for the petitioners submitted that the amendment has been allowed beyond the period of limitation. The trial court has observed that it is difficult to determine at this stage as to when the period of limitation began to run.

5. The learned counsel further contended that the respondent has admitted in her evidence that she is in possession of the suit land since 1960. No evidence

to that effect has been pointed out to me except the reply filed by the petitioners to some application, in which, the petitioners have contended that she has admitted that she lives in another village. It must be remembered that the suit pertains to agricultural land and merely not being in actual possession, does not mean that the person is not in possession as is wellsettled under several decisions under the Bombay Tenancy and Agricultural Lands Act, 1948. This does not mean that the petitioners have no legal or constructive possession. In any case this is the matter that shall be decided by the trial court in accordance with the law. In this situation, the observations of this court in the case of Ashok Daga Patil vs. Daga Yadav Patil & Ors., (2003 (2) BCJ 878), have no application to the present case.

6. In the circumstances, I see no merit in the petition. The order allowing amendment is not liable to be interfered with. Therefore, the petition is dismissed.

07.07.05 (S.A.BOBDE,J.)

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